

**EMERGENCY**See instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2009-0703-01E</b>
For use by Office of Administrative Law (OAL) only		2009 JUL -3 AM 10:33 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Fish and Game Commission			AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Pacific Herring Open Ocean Commercial Fishing Regulations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 14		AMEND 163	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Sheri Tiemann or Jon Fischer		TELEPHONE NUMBER (916) 653-4899	FAX NUMBER (Optional) (916) 653-5040
		E-MAIL ADDRESS (Optional)	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jon K. Fischer</i>	DATE 3 July 2009
TYPED NAME AND TITLE OF SIGNATORY Jon K. Fischer, Deputy Executive Director	

## Regulatory Language

Subsection (h)(6) of Section 163, Title 14, CCR, is amended to read:

§163. Harvest of Herring.

...

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season shall be from 5 p.m. on Monday, December 1, 2008 until noon on Friday, December 19, 2008 and from 5 p.m. on Sunday January 4, 2009 until noon on Friday, March 20, 2009.

(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to the "even" fishing group shall be permitted to fish only on the following dates: January 4-9, January 18-23, February 1-6, February 15-20, March 1-6, and March 15-20.

(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to the "odd" fishing group shall be permitted to fish only on the following dates: January 11-16, January 25-30, February 8-13, February 22-27, and March 8-13.

(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to the "DH" fishing group shall be permitted to fish only on the following dates: December 1-5, December 7-12 and December 14-19. In the event permittees described under subsections (h)(3)(A) and (h)(3)(B) both reach their quotas pursuant to subsection (g)(4)(A), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.

(D) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from 5 p.m. on Monday, December 1, 2008 until noon on Friday, December 19, 2008 and from 5 p.m. on Sunday, January 4, 2009 until noon on Friday, March 20, 2009.

(4) In Tomales Bay, the season shall be from noon on Friday, December 26, 2008 until noon Friday, February 27, 2009.

(5) Herring fishing in San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night. Herring fishing is allowed in Tomales Bay from noon Friday through 5:00 p.m. Sunday night if the department is reimbursed for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the service. Party shall remit payment to the department within 30 days of the postmark date of the department's invoice.

(6) Ocean Waters: ~~The season shall be from April 1 to October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November 30.~~ The season shall be from April 1 to [OAL will insert date on approval] for all authorized gear. An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed at any time during 2009.

(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification

by the department may commence fishing operations until such group has reached the successive established termination date or quota.

....

Note: Authority cited: Sections 1050, 5510, 8550, 8553 and 8555, Fish and Game Code. Reference: Sections 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.

State of California  
Department of Fish and Game  
**M e m o r a n d u m**

Date: June 4, 2009

To: John Carlson, Jr.  
Executive Director  
Fish and Game Commission

From: Donald Koch  
Director  
Department of Fish and Game

Subject: Agenda Item for June 24-25 Fish and Game Commission Meeting Re: Request for  
Emergency Regulatory Action to Amend Section 163, Title 14, California Code of  
Regulations Re: Pacific Herring Open Ocean Commercial Fishing Regulations

The Department of Fish and Game (Department) requests that the Fish and Game Commission (Commission) consider taking emergency regulatory action to close the Ocean Waters herring fishery on July 1, 2009. The attached Statement of Proposed Emergency Regulatory Action is provided in support of the proposed emergency regulatory action to amend Section 163, Title 14, CCR.

Emergency regulatory action by the Commission is needed to close the ocean waters (Open Ocean) fishery to protect the San Francisco Bay Pacific herring stock due to a dramatic decline in biomass. It is thought that the ocean waters fishery is comprised primarily of Pacific herring from the San Francisco Bay stock. Closing the ocean waters fishery would help protect the remaining herring stock from further depletion. Because herring landings for this fishery occur between April and August, with 93 percent of the landings occurring in July and August, emergency action is needed by the Commission to close the ocean waters fishery on July 1, 2009.

If you have any questions or need additional information, please contact Marija Vojkovich, Regional Manager in the Department's Marine Region, by telephone at (805) 568-1246.

Attachment(s)

cc: Neil Manji, Chief, Fisheries Branch, Sacramento  
Marija Vojkovich, Regional Manager, Marine Region, Santa Barbara  
John Mello, Marine Region, Eureka

**CALIFORNIA FISH AND GAME COMMISSION**  
**STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION**

Emergency Action to Amend Subsection (h)(6) of Section 163,  
Title 14, California Code of Regulations,  
Re: Pacific Herring Open Ocean Commercial Fishing Regulations

**I. Statement of Facts Constituting the Need for Emergency Regulatory Action**

Emergency regulatory action by the Fish and Game Commission (Commission) is needed to close the ocean waters fishery to protect the San Francisco Bay Pacific herring stock due to a dramatic decline in biomass. It is thought that the ocean waters fishery is comprised primarily of Pacific herring from the San Francisco Bay stock. Closing the ocean waters fishery would help protect the remaining herring stock from further depletion. Because herring landings for this fishery occur between April and August, with 93 percent of the landings occurring in July and August, emergency action is needed by the Commission to close the ocean waters fishery on July 1, 2009 or soon thereafter. The Department of Fish and Game (Department) is also recommending a zero harvest or no fishery option to the Commission for the 2009-2010 San Francisco Bay gill net and herring-eggs-on-kelp fisheries, and a closure of the 2010 ocean waters fishery in a regular rulemaking package that will be presented to the Commission at the June 25, 2009 meeting.

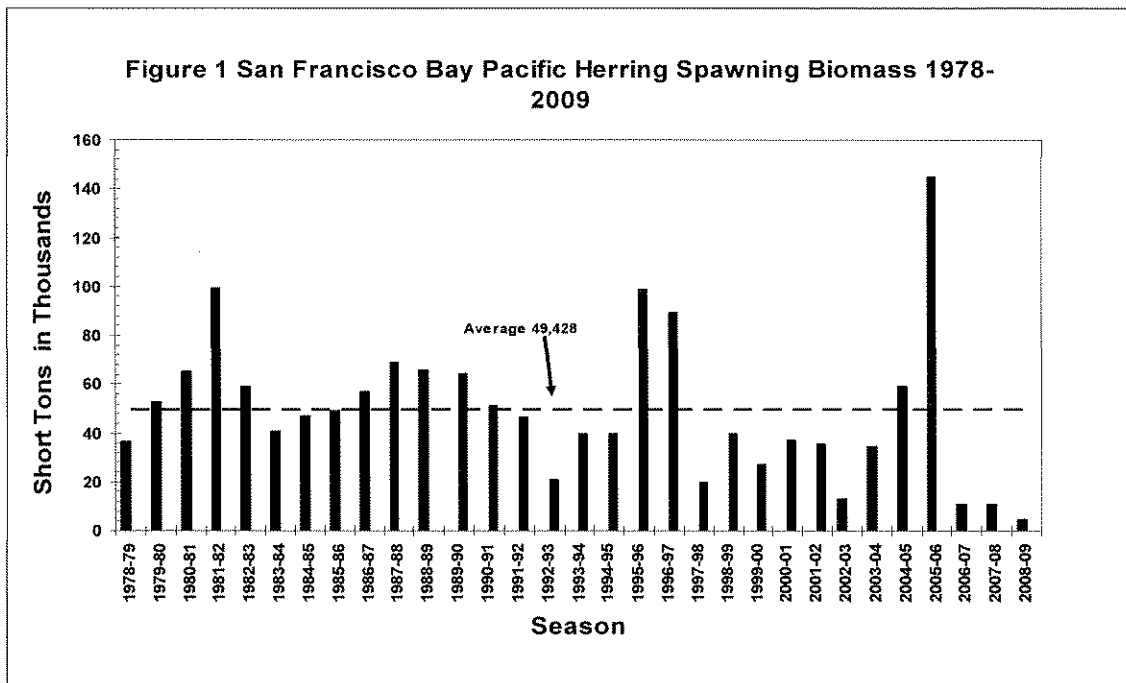
The ocean waters fishery for herring in California occurs during the non-spawning season primarily in the waters of Monterey Bay. A licensed commercial fisherman, with an ocean waters Herring Permit may take herring in ocean waters from April 1 to October 31, for all authorized fishing gear except in districts 16 and 17 where the season is from April 1 to November 30. Pacific herring are caught opportunistically in ocean waters, primarily in Monterey Bay, by purse seiners primarily targeting other coastal pelagic fish species. Herring typically make up a small percentage of any given vessel's overall catch and revenue. From 1998 to 2002, intermittent herring landings were made from ocean waters, accounting for approximately one percent of California's overall herring catch. However, between 2005 and 2008, approximately 42 percent of the overall California commercial herring catch was landed by this fishery (Table 2). During this period, herring landings from ocean waters averaged 199 tons per year (ranging from 41 to 371 tons). Under current regulations, the ocean waters fishery is the only herring fishery with no quota limit. Given the recent decline of the San Francisco Bay stock, the Department considers it appropriate to put in place additional conservation safeguards to protect herring during the current ocean waters season. Closing the ocean waters fishery on July 1, 2009 or soon thereafter, would help achieve the Department's goal of protecting this valuable resource.

The Department believes that due to the depressed state of the San Francisco stock, a precautionary approach needs to be taken to ensure long term sustainability of the fishery while safeguarding its importance as a forage species in a functioning ecosystem. A closure of the ocean waters fishery would prohibit the targeting of herring, protect the San Francisco stock from fishing mortality in ocean waters, and conserve more herring for stock rebuilding.

<b>Table 1. California ocean waters Pacific Herring Landings in Short Tons 2000- 2008</b>						
<b>Year</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>August</b>	<b>Total</b>
<b>2000</b>			4.65	23.6		<b>28</b>
<b>2001</b>	0.01			0.11		<b>&lt;1</b>
<b>2002</b>		0.08		0.03		<b>&lt;1</b>
<b>2003</b>	37.5	0.16	0.01			<b>38</b>
<b>2004</b>				27.7		<b>28</b>
<b>2005</b>			0.05	48.6	192.41	<b>241</b>
<b>2006</b>				40.6		<b>41</b>
<b>2007</b>	34.8				335.98	<b>371</b>
<b>2008</b>	26.4			118		<b>145</b>

<b>Table 2. California Pacific Herring Landings Open Waters and Roe Fisheries 2000- 2008</b>		
<b>Year</b>	<b>ocean waters Fishery (short tons)</b>	<b>Herring Roe Fishery (short tons)</b>
<b>2000</b>	<b>28</b>	<b>3121</b>
<b>2001</b>	<b>&lt;1</b>	<b>2858</b>
<b>2002</b>	<b>&lt;1</b>	<b>3664</b>
<b>2003</b>	<b>38</b>	<b>1993</b>
<b>2004</b>	<b>28</b>	<b>1743</b>
<b>2005</b>	<b>241</b>	<b>150</b>
<b>2006</b>	<b>41</b>	<b>765</b>
<b>2007</b>	<b>371</b>	<b>288</b>
<b>2008</b>	<b>145</b>	<b>690</b>

The 2008-2009 season spawning biomass estimate for the San Francisco stock was 4,844 tons, well below the historical average (1978-1979 season to present) of 49,428 tons (Figure 1). The 2008-2009 season was the third consecutive season of historically low biomass estimates during the 36 years the Department has monitored this fishery. Based on the low numbers of herring returning from the 2003-2004, 2004-2005, and 2005-2006 year classes, the Department is concerned that there are insufficient numbers of 4-year old and older herring to support a sustainable fishery. There is additional concern because recent year class strength has been below average and strong year classes are vital to support the fishery. In addition, the ocean waters fishery has taken more herring than the San Francisco Bay fishery in two of the last four years when the stock has been depressed. Pacific herring is a critical species that plays an important role in oceanic and bay food webs. At current low population levels, the San Francisco stock is considered to be depressed and protecting the remaining population is vital to maintaining a healthy functioning ecosystem. Because of the ecological importance of herring as a forage species; precautionary measures to close the ocean fishery need to be taken to allow stock rebuilding helping to ensure the long term sustainability of the fishery.



In addition, potential impacts from the 2007 Cosco Busan oil spill remain unresolved, as the results from the NRDA study on oil impacts to herring resources have yet to be released. Without the published results from the study, the Department must give special consideration to the potential and possibly long term negative impacts to herring eggs and larvae in areas exposed to oil. Impacts to eggs and larvae have the potential to affect recruitment of adult herring and could jeopardize the sustainability of this fishery.

## II. Impact of Regulatory Actions:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:  
None
- (b) Nondiscretionary Costs/Savings to Local Agencies:  
None
- (c) Programs Mandated on Local Agencies or School Districts:  
None

- (d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None

- (e) Effect on Housing Costs:

None.

### **III. Authority and Reference:**

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 240, 1050, 5510, 8550, 8553 and 8555 of the Fish and Game Code, and to implement, interpret, or make specific sections 240, 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559 of said Code.

### **IV. Express Finding of Emergency:**

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth above in the "Statement of Facts Constituting Need for Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

The Commission specifically finds that the adoption of this regulation will protect the remaining herring stock from further depletion.

### **V. Specific Agency Statutory Requirements:**

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to Section 240 of the Fish and Game Code. The Commission will hold a public hearing on this regulation on June 25, 2009, and the above finding that this regulation is necessary for the immediate conservation, preservation or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof, meets the requirements of Section 240.

### **Informative Digest (Plain English Overview)**

Under existing law, herring and herring eggs may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission (Commission) shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; landing and monitoring requirements; permit categories and conditions; royalty fees; permit performance deposit requirements; fishing and harvesting restrictions; processing requirements and permit suspension conditions and procedures.



Emergency regulatory action by the Fish and Game Commission (Commission) to close the ocean waters herring fishery on July 1, 2009, or soon thereafter is needed to protect the San Francisco Bay Pacific herring stock due to a dramatic decline in biomass. It is thought that the ocean waters fishery is comprised of Pacific Herring from the San Francisco Bay population. At low population levels, the San Francisco stock is considered to be depressed and protecting the remaining population is vital to ensure future rebuilding of the stock and maintaining Pacific herring's role in a healthy functioning ecosystem. Emergency action is needed to close the ocean fishery on July 1, 2009, because herring landings for this fishery occur between April and August, with 93 percent of the landings occurring in July and August. Given the recent decline of the San Francisco Bay stock, the Department of Fish and Game (Department) believes it appropriate to put in place additional conservation safeguards to protect herring during the current ocean waters season. Closing the ocean waters fishery would help protect the remaining herring population from further decline. The Department is also recommending a zero harvest or no fishery option to the Commission for the 2009-2010 San Francisco Bay gill net and herring-eggs-on-kelp fisheries. This option is being presented to the Commission at the June 25, 2009 meeting for consideration during the regular rulemaking process. An emergency closure of the ocean waters fishery would prohibit the targeting of herring, protect any San Francisco stock from additional fishing mortality in ocean waters, and conserve more herring for stock rebuilding. Closing the ocean waters fishery on July 1, 2009 or soon thereafter would help achieve the Departments goal of protecting this valuable resource.

The following is a summary of the proposed changes in Subsection (h)(6) of Section 163, Title 14, CCR:

- The Department's proposed regulations would close the ocean waters fishery beginning July 1, 2009 or soon thereafter that takes place for herring, primarily in Monterey Bay. An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed at any time during 2009 so that the prohibition on targeting herring would not inadvertently or unduly affect the fisheries for Pacific sardine and market squid.

## Regulatory Language

Subsection (h)(6) of Section 163, Title 14, CCR, is amended to read:

§163. Harvest of Herring.

...

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season shall be from 5 p.m. on Monday, December 1, 2008 until noon on Friday, December 19, 2008 and from 5 p.m. on Sunday January 4, 2009 until noon on Friday, March 20, 2009.

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